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IN THE

Supreme Court of the United States

OCTOBER TERM, 1945.

No. 147.

WADE H. COOPER, *Petitioner,*

vs.

R. C. PARSONS, Receiver of the United States Savings Bank, *Respondent.*

PETITION FOR REHEARING OF PETITION FOR THE WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

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University Club,
Washington, D. C.

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CHARLES W. WARDEN, WASHINGTON REPRESENTATIVE,
TOWER BUILDING

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To the Honorable, the Chief Justice of the United States and Associate Justices of the Supreme Court of the United States:

Petitioner, Wade H. Cooper, respectfully requests a rehearing and a reconsideration of his Petition for the Writ of Certiorari to the United States Court of Appeals for the District of Columbia, which was denied by this Court on October 8, 1945.

Statement.

The questions presented in this cause are questions of general importance and great public concern and extend far beyond the mere liquidation of a solvent bank, to every part of the country wherever a National Bank is located, which means almost every city and village in the United States. Not only that, but the questions presented are all questions where the lower Courts refused to follow applicable decisions of this Court, and refused to obey the plain letter of the law as to the rate of interest to be paid by the Bank, and invaded the constitutional rights of Petitioner as a citizen of this country in violation of the due process clause of the Fifth Amendment and in impairing the obligations of contracts. The questions presented for consideration and determination meet squarely and fairly the character of reasons laid down by this Court in its Revised Rules adopted February 13, 1939, as stated under Rule 38, paragraph 5(c).

If there is to be any change or modification of applicable decisions of this Court, these changes should be made by this Court and not by the lower Courts; and if any statute of the United States is to be changed or modified or disregarded for any reason, it should be done by this Court and not by the lower Courts, or we shall have a multiplicity of conflicting decisions and a resulting amount of impossible and unutterable confusion, a vortex of insufferable nonsense.

In the consideration of this Petition, it is important for this Court to keep in mind the following material facts:

1. That the bank was four times solvent because the stockholders, by their self-denial of dividends, created a

surplus for the protection of the depositors, fifteen or twenty times the amount required by law (p. 13, our first brief for the law).

2. That by this self-denial the depositors were paid 100 per cent just as soon as the former Comptroller of the Currency was willing to pay it, after an admitted expenditure of $235,000 (R. p. 22). (The report now shows $288,000 expended, with a surplus of $160,000 left.)

3. That the highest rate of interest on savings paid by banks in the District is one per cent, and no interest on commercial accounts (R. p. 55) and that the contract rate prevails in case of a judgment.

4. That the former Comptroller of the Currency held the bank in the hands of a Conservator for eleven months, seeking to sell its prime assets to another bank of his own promotion at 100 cents on the dollar (R. p. 5) instead of liquidating it, if insolvent, as the law requires.

5. That the former Comptroller arbitrarily refused to promptly convert the assets into cash and distribute the proceeds, as the law requires, for eleven months, while engaged in dissipating the assets and accumulating an interest charge (R. pp. 46, 47).

6. That the former Comptroller arbitrarily refused to make distribution of the cash on hand for months at a time (R. pp. 46, 47).

7. That the bank was arbitrarily and fraudulently liquidated and destroyed (R. pp. 3, 11).

8. That this Court has a perfect right to assume equity jurisdiction, if it wills to do so, and fix a fair rate of interest, in the unusual circumstances in this case (our first brief, pp. 22 and 30).

9. That, according to previous decisions of this Court, the doctrine of *subrogation* should apply (p. 21, our first brief).

10. That the lower Courts had prejudged the law and the facts, and denied Petitioner a fair and impartial hearing in violation of the due process clause of the Fifth Amendment, and in violation of Article 1, Section 10, Clause 6 of the Constitution, prohibiting the impairment of contractual obligations.

Jurisdictional.

While Sec. 240(a) of the Judicial Code, as amended, says this Court *may* hear and determine any case, it does not mean this Court *may*, with utter indifference, brush aside any case where either the law or the Constitution has been violated by the lower Courts. The word *may* is used instead of *shall* in order to give this Court authority to deny a hearing where the case is without merit, or where the law or the Constitution has not been violated. Every member of this Court takes a solemn oath

> "to administer justice without respect to persons, and do equal justice to the poor and to the rich * * * agreeably to the Constitution and the laws of the United States."

Therefore, the members of this Court are bound by solemn oath to administer justice without respect to persons and to support the Constitution and the laws of the United States. We expect to show that not only applicable decisions of this Court have been disregarded, but that the law regarding interest rates, as enacted by Congress, and the Constitution have been, without reason, violated by the lower Courts.

Reasons for Rehearing.

1. *ULTRA VIRES* ACTS. Petitioner has never sought to deprive the depositors of a reasonable rate of interest, as they were not responsible for the destruction of the bank, but he sought to show that the Savings Bank was not liable for its *ultra vires* contracts, according to applicable decisions of this Court, as well as the Court of Appeals, as stated in our first brief on pages 12 and 13, citing Dunn v. O'Connor, *et al.* (1937) 67 App. D. C. 78, (89 F. (2d) 820) where the Court of Appeals said:

> "It (the Trust Co.) received from time to time dividends from the Commercial (Bank) aggregating $105,000 on Commercial)Bank) stock and presumably distributed these to its own stockholders as dividends * * *."

Continuing the Court said (p. 85):

> "* * * there can be no doubt that * * * the debts * * * created *ultra vires* the Corporation, the stockholders of the Continental (Trust Co.) have an interest entitling them to maintain a suit * * *."

This would seem to dispose of the question of *estoppel* of Petitioner because he had received dividends, as claimed by Respondent.

And in Thompson v. Park Savings Bk., 68 App. D. C. 276, (96 F. (2d) 544) the Court of Appeals said the bank continued

> "* * * to declare dividends, to be examined by the Comptroller * * *."

The case of the American Surety Co. v. Moran, 64 App. D. C. 127, relied upon by Respondent, easily distinguishable from the instant case, as in that case the American Surety Co., duly incorporated, without any question of its charter right, had issued its bond for $50,000.

The position of the Court of Appeals in the above first two-mentioned cases is sustained by this Court in numer-

ous decisions. See Union Pac. RR. Co. v. Chicago R. I. & P. RR. Co., 163 U. S. 564; First Natl. Bk. v. Converse, 175 U. S. 40.

> "But when the contract is beyond the powers conferred upon it by existing laws, neither the Corporation nor the other party to the contract can be estopped by assenting to it, or by acting upon it, to show that it was prohibited by those laws." (Central Trans. Co. v. Pullman's Palace Car Co., 139 U. S. 24, 35 L. Ed. 55.)

The lower Court decided this question of estoppel in a manner contrary to the above decisions of this Court, as well as contrary to its former decisions in Dunn v. O'Connor, *et al., supra*, and in Thompson v. Park Sav. Bank, *supra*.

2. INTEREST RATE. Different States have different laws with reference to interest rates, for instance the District Law is in agreement with the West Virginia Law, the Virginia law and some other states.

> "Interest being the subject of contract, our cases hold that where interest is contracted for at less than the legal rate that rate will control after maturity and judgment as well as before." Pierpont vs. Pierpont, Admr. 71 West Va. 431 (1912).

> "It is error to decree interest at 6% when the agreed rate is less". Morris vs. Bear, 72 West Va. 1, 78 SE. 371.

This is also the law of Virginia as shown in Brooks vs. Roane, 1 Call (Va.) 205; Brent vs. Patten, 1 Rand (Va.) 25.

West Va., did not allow interest on bank deposits until the case of Hoffman vs. Unger (1943) 24 S. E. 2d 911. But Supreme Court of West Virginia did not change the interest rate.

The case chiefly relied on in the Courts below, by Respondent was Stein vs. Delano, 121 F. 2d 975 (1941) in the

Third Circuit Court of Appeals. That Court quotes with approval the author of an article in the Michigan Law Review on the subject of the difference in the interest rates. The Court stated that the logic of the writer, regarded as an authority, "seems unanswerable" and then proceeds to quote from the article thus:

> **"On the other hand when the surplus is sufficient to pay in full the interest due to all creditors, a difference in the rates provided by their contracts is not productive of any unjust equality between them. The rights of one are in no way affected by the amount received by the other. An amount equal to the principal is paid to each. Even where the surplus will not pay all the interest in full, no unjust equality results from dividing it on the basis of different contract rates. The balance remaining due is proportioned to the compensation that each should receive for the use of his money. There is no injustice in computing the proportion of compensation to be received by each creditor on the basis of the rate of compensation for which he contracted."**

"RATABLE" in the National Bank Act clearly refers to all claims proven or adjudicated as they stand on the date of insolvency, without any thought of interest or compensatory damages, American Surety Co. vs. Bethlehem National Bank, 314 U. S. 314, (86 L. Ed. 241) at Page 317 (1941) and other cases there cited. Mr. Justice Douglas in his dissenting opinion at page 320 said:

> "The Majority of the Court was of the view that whatever might be the power of Congress, under the Bankruptcy Clause of the Constitution, the adoption of the bankruptcy rule in Equity would be an invasion of 'prior' contract rights (173 U. S. at p. 146)—an impairment of the obligation of contracts."

This case of Stein vs. Delano, *Supra* arose in the State of New Jersey and grew out of the closing of the New Jersey National Bank & Trust Co. of Newark. The Third Circuit Court of Appeals appears to have relied upon the case of Mayor, etc. of Jersey City vs. O'Callaghan, 41 N. J. L. 349.

354. The New Jersey Court of Errors & Appeals (1879) regarding the subject of interest had this to say:

> **"The subject is necessarily presented under two aspects,—first, with regard to what may be called interest proper; and second, when a rate of interest is taken as a measure of damages. The distribution of the subject is material, the two branches of it being subject to dissimilar considerations. Interest proper arises whenever money is lent or forborne with an understanding express or implied that an equivalent shall be given for its use, and in such case the rate of interest agreed upon or if none such be agreed upon, the rate then existing by law, is, in the absence of any new agreement the rate to be paid until the return of the money * * * therefore, on loans and on forbearances the original rate of interest will rule until the repayment of the money, unless the rate shall have been altered by a new agreement between the parties. In such cases it is interest and not damages that is to be assessed." Continuing, the Court said, "But when agreements other than those for the loaning or forbearing of money on interest are broken, another and different rule obtains, for in such cases, as well as in cases for torts, damages and not interest, are to be admeasured. When, for instance, goods are sold, on specified credit, and are not paid for at the time stipulated, the contract for sale is broken * * *—the law takes the legal rate as the fair measure of such damages * * *."**

In Rule 30, paragraph 1 (Rules of this Court), appears the following:

> "Where judgments for the payment of money are affirmed, and interest is properly allowable, it shall be calculated from the date of the judgment below until the same is paid, at the same rate that similar judgments bear interest in the Courts of the State where such judgment was rendered."

This Rule follows the law as enacted by the Congress for National Banks in regard to interest rates. Why depart from this rule? The law of the District is *perfectly plain* regarding interest rates, as shown on page 14 of our first

brief. Sec. 28-2701 of the D. C. Code of 1940 provides for six per cent,

> "in the absence of express contract as to such rate of interest."

By *express contract* the demand or commercial deposits were not to receive any interest. (See Rules and Regulations R., page 27.)

Sec. 28-2707 of the D. C. Code of 1940 provides that in an action to recover a liquidated debt,

> "on which interest is payable by contract or by law or usage, the *judgment* for the plaintiff shall include interest on the principal debt from the time when it was due and payable at the rate fixed by the *contract*, if any, until paid."

These are plain words with plain meanings. The Statute does not say "except banks" or "except Building Associations" or except anything else. The Statute is plain and applies to all alike, for otherwise it would have been discriminatory. The fact that other banks have paid interest in excess of the contract rate is certainly no argument for continuing such an unlawful practice, any more than to argue that because 400 solvent banks were wrongfully closed, it is a practice which must continue, right or wrong. Surely this Court in its dignity and learning, should rise above such idle talk. And, if interest is awarded as compensatory damages, there should be some proof of the amount of damages. The prevailing highest interest rate on savings in the District by banks is one per cent (R. P. 55, Affidavit of Petitioner).

Why not obey the law and the Constitution, which we are all sworn to support, if this Court will not assume equity jurisdiction and fix a fair and reasonable rate.

Either Law or Equity should prevail. If the law is to prevail, then it is as already stated, nothing on commercial

deposits and 3% on savings. If Equity is to prevail, then a fair and reasonable rate, according to the authorities cited on pages 20 and 22 of our first brief.

> "The running of interest is suspended where payment is prevented by operation of law." Vol. 7, P. 226, Enc. U. S. Sup. Ct. Reports (1910).

> "It would be *manifestly unjust* to exact interest as compensation, or damages, when the payment of the debt is interdicted." Brown vs. Hiatts, 15 Wall. 177, 185, 21 L. Ed. 128.

> "* * * Interest is not allowed on the claims against the funds. The delay in distribution is the act of the law; it is a necessary incident to the settlement of the estate." Thomas vs. Western Car Co., 149 U. S. 95, 116, 37 L. Ed. 663.

It would be a reflection upon the intelligence of each and every member of this Court to suggest that any member really *believes* that a fair and reasonable rate of interest in the instant case, would be six times the prevailing interest rate paid by banks in Washington which is one per cent (R. P. 55). And it would also be a reflection upon the intelligence of this Court to suggest that any member of this Court really *believes* that by agreement no interest was to be paid on commercial accounts, means 6 per cent after maturity, or that the contract rate of 3 per cent on savings means 6 per cent after maturity, when the law, already cited plainly says that the *judgment* shall include interest at the contract rate, if any, until paid.

We challenge opposing counsel to produce one single case in the entire history of the District of Columbia where the contract rate was ever increased by the Courts before or after maturity. And we challenge them to produce one single case in the history of the District of Columbia where interest was ever allowed when the contract was to the effect that no interest would be paid or received. There is no such case.

In R. R. Co. vs. Harmon, 147 U. S. 290, Chief Justice Fuller, speaking for this Court said:

> "It is conceded that at Common Law judgments, whatever the cause of action, did not bear interest * * *. Judgments bore interest in actions *founded on contract*," (Italics supplied) Sec. 28-2701 (page 14 of our first brief) is, in all legal respects, the same as the act of 1870 (page 18 of our first brief) discussed by Chief Justice Fuller in R. R. vs. Harmon, *supra*.

Neither of these statutes say that *all Judgments* should thereafter bear interest, as stated by Mr. Chief Justice Fuller, but judgments bore interest in actions *founded on contract*. This Court has held that the suspension of the bank renders a judgment unnecessary, which we think is correct. But why disregard the plain letter of the law regarding interest for a bank that was four times solvent? Why penalize the bank for being sound and solvent? Why open wide the gates for wholesale fraud by the Comptroller of the Currency? He can arbitrarily wreck and destroy every National Bank in the United States (as here) if he can double the interest rate and squander the assets of the bank with impunity. This is perfectly illustrated in the instant case.

Respondent admits in his answer (R. P. 17, para. 5) that Sec. 28-2701 of the D. C. Code of 1940 is the law regarding commercial accounts, and that Sec. 28-2707 of the same Code is the law regarding savings accounts.

Respondent, through his Counsel, then proceeds to state that there is no provision for interest after maturity, and therefore the rate after maturity (Closing of the bank) must be 6 per cent. This is not respectable nonsense, as Sec. 28-2707 specifically requires that the *Judgment* (after maturity) shall include interest at the rate fixed *by the*

contract, if any, until paid. We have already shown that no interest is due on commercial accounts, according to the agreement.

3. DUE PROCESS—After Judge Bailey had expressed the View (R. P. 14) in the McKinley High School Bank case, civil action No. 17348 that 6 per cent might be due after maturity, all of us were sure that Judge Letts would hold accordingly, which he did. This Court should not sanction these opinions in direct conflict with the law. Judge Bailey had previously joined Judge Wheat in disbarring Jesse Duke, a lawyer of ability, for criticisms of Judge Letts. We know nothing of the merits of the disbarment. Judge Bailey permitted the former Comptroller to destroy the bank when the record showed perfect solvency. When petitioner suggested by letter to Judge Bailey that in view of his former action in permitting the bank to be destroyed, Petitioner doubted if he would care to preside in the case, but follow the custom of the Supreme Court and stand aside. But he was more determined than ever to do what he did. Comity would prevent Judge Letts from rendering an opinion contrary to the opinion of Judge Bailey. But Judge Letts over the earnest protest of Petitioner ordered the bank building sold on December 23d, 1943, (R. P. 51) at a loss of rent to the amount of $8,500 per annum. Certainly he had determined then and there to decide the instant case against Petitioner or he would not have permitted a sale of the Building. He would not have fired the gun unless he meant to kill. It is not unfair to suggest that these two Judges likely conferred and determined to do exactly what they did do.

> "The words of the statute are peremptory and *must* be obeyed * * * but whatever the consequences, we must accept the plain meaning of plain words." U. S. vs. Brown, 206 U. S. 208; 51 L. Ed. 1046.

If any of the statements with reference to Judge Bailey or Judge Letts are not in this record, they may be found in the record or in the briefs in the Court of Appeals, of which this Court may take judicial notice.

The following few lines from a letter of petitioner to Judge Bailey will show he permitted the destruction of this bank:

> "You also held that the Comptroller's position that the depositors and not the stockholders, under the plan submitted, would be furnishing capital 'to the extent of about $150,000', 'So far as liquid or available assets were concerned,' was not subject to criticism though their own Examiner, Mr. Wm. M. Taylor, had stated that the non-liquid or criticised assets had a value of about $270,699.52 arrived at in this way, as testified by Mr. Taylor:
>
> | | *Good* |
> |---|---|
> | Slow $235,188.32, of which 10% or 20% is not good | $188,150.52 |
> | Doubtful $165,099.78, of which 50% is good | 82,549.00 |
> | Total Good | $270,699.52 |
>
> All this appears in the testimony of Mr. Taylor, page 144, Vol. 3, Friday November 10th, 1933, Cooper vs. Woodin, Equity No. 56143, and Mr. Taylor's statement of assets and liabilities, same case, Vol. 2, Thursday November 9, 1933.
>
> Then on pages 144 and 145 Vol. 3, Same case and same date (Nov. 10, 1933) Mr. Thomas, my Attorney, attempted to develop this situation when you said:
>
> Q. 'Is not that simply a question of addition?'
>
> Mr. Thomas: 'I think so, your Honor.'
>
> The Court: 'I do not think you should take up time on that then.'
>
> Mr. Thomas: 'All right, I withdraw it, your Honor. That is all.'
>
> Right then and there it is clear that I lost the case, when these non-liquid assets could have been used and should have been used for the $150,000.00 of Capital and Surplus required by the Comptroller, still leaving over $120,000.00 of these good assets for undivided profits. This is the manner in which this Savings Bank,

> the best bank in the United States, was wrecked and destroyed, though numerous banks all over the Country carry their capital and surplus in the Bank Building or in real estate loans which are usually good but slow or non-liquid."

It would be unnatural to expect either Judge Bailey or Judge Letts to hold otherwise than they did in view of the facts disclosed in this record.

That they were prejudiced and had predetermined what they would do seems a fair and only correct conclusion in violation of the due process clause of the Fifth Amendment.

If the members of this Court are determined to sustain or sanction the violations of the law and the Constitution by the lower Courts, and the violations of the applicable decisions of this Court, which the Petitioner has pointed out, then Petitioner may be wasting his time, but he believes, under the law, that it should be the pleasure of this Court to fairly and impartially give that consideration to the questions presented, to which they are entitled; and that this Court should rise above all prejudice of any kind, whether it be for past criticisms of this Court by Petitioner or for his refusal to submit to the arbitrary and fraudulent closing of this bank by the former Comptroller. Petitioner is helpless and defenseless if this Court is going to use its power to sustain or sanction the arbitrary and unlawful decisions of the Courts below. Indeed "Power should respond to reason none the less because its fiat is beyond appeal."

4. DELAY AND WASTE—This is a question of great concern to the stockholders of every bank in the United States. The lower Courts held that the charges of failing to convert the assets and distribute the cash, as required by law, and the negligent wasting of the assets, as pointed

out by petitioner, were irrelevant and immaterial. There is no record of this Court having ever passed upon these questions. There should be a limit to what the Comptroller may waste and a limit as to how long he may delay the conversion of the assets. The Receiver is the representative of the Comptroller, he is the agent of the Comptroller, who is the real Trustee. In the instant case the failure to convert and make distribution plus the waste in negligently failing to collect interest and pay taxes is equal to a sum in excess of the amount now claimed for interest.

Should this waste and negligence be saddled upon the stockholders or depositors or both, and if upon the stockholders to what extent? How many times may the Comptroller waste and destroy the assets representing the Capital and Surplus of the bank, belonging to either the depositors or the stockholders? This is a question of great importance and should be definitely settled by this Court and not by the arbitrary holding of the lower Courts. Bogert on Trusts (Second Ed.) page 344 says:

> "The cardinal duties of Trustees, are these: (1) To carry out the trust (2) To use care thereabout; and (3) to act in good faith thereabout," citing a number of authorities. Continuing "That the Trustee has not been requested to perform the trust is no defense. He should proceed on his own initiative", citing authorities.

Certainly the Court should determine these questions and not leave them to the lower Courts.

5. *RES ADJUDICATA.* The Respondent insisted that all the facts charged showing that the Savings Bank was arbitrarily and fraudulently liquidated were *res adjudicata*, though he did not point out one single fact charged which had ever before been passed upon on its merits, as the decisions of this Court require. The lower Courts sustained the plea of *res adjudicata* with full knowledge that

not a single new fact had been passed upon by any Court. Petitioner will not repeat these charges as they cover several pages in the record (R. 3, 11) but Petitioner after a general practice of 15 years in Tennessee with an extensive experience, is perfectly confident of a conviction of the former Comptroller of arbitrarily and fraudulently liquidating the bank in the instant case. Of course Petitioner cannot do that, if he is denied a trial on its merits,—a gross denial of justice and a violation of the due process clause of the Fifth Amendment.

If your Honors will take the time to read the substituted counter claim (R. pp. 3, 11) we do not think you will have any difficulty in reaching the conclusion that the intention of the former Comptroller was to wreck and destroy the Savings Bank in the instant case, knowing that it was perfectly solvent. (1) Why did he require $150,000.00 cash (new money) as a condition precedent to the opening of the bank when at the same time he was approving the sale of preferred stock and debentures to the extent of $574,000.00 by other banks? (2) Why did he permit other banks to defer or delay payments of as high as 65%, but refuse to permit this bank to open upon deferring only 35%? (3) Why did he permit other banks to open upon payment of 2% interest, but required this bank to pay 6%? Why did he insist upon suit against the stockholders over the protest of his Receiver, Carter B. Keene, to the extent of a loss of $96,000.00? (5) Why did he refuse to follow the suggestion of his superior, the Secretary of the Treasury to bring in a plan to open the bank? The substance of his answer was his animus toward Petitioner because of previous litigation. (6) Why did he refuse to distribute $775,000.00 cash on hand March 31, 1935, for over six months? Why did he refuse to pay all proven claims ($1,581,340.81) in full on March 31, 1935, instead of restoring $771,000.00 to the

R. F. C. and in refusing to disburse $281,846.96 cash left over after restoring $771,000.00 to the R. F. C. (R. p. 48, Ex. "B"). He could have done this and still have left to restore to the R. F. C. $498,579.42. (7) Why did he refuse to borrow on the assets or sell them at par and pay all proven claims promptly in July 1934, which he could have done? (Affidavit R. pp. 51, 52). We are now referring to the arbitrary refusal to liquidate the assets and pay all proven claims, (not solvency) which would have eliminated practically all of the interest charge. The lower Courts sustained the motion of Respondent to dismiss all these charges as immaterial, irrelevant and *res adjudicata*, though any one of them, unexplained, should convict the former Comptroller of being arbitrary.

There has never been a trial on its merits—

> "The decree, not being on the merits, could not be a bar to such subsequent suit in a State or United States Court", Swift vs. McPherson, 232 U. S. 504, and other cases cited in our first brief P. 26.
>
> " * * * There can be and ought to be no repose of society where for such wrongs the Courts are incapable of giving redress." Graves vs. Faurot, 76 F. 263.

6. IMPAIRMENT OF CONTRACTS. In U. S. v. Amos Kindall, Postmaster General, with which your Honors are acquainted, Chief Justice Cranch quoted with approval Chief Justice Marshall in the old case of Cohens v. Virginia, as follows:

> " * * * with whatever doubts, with whatever difficulties, a case may be attended, we must decide, if it be brought before us. We have no more right to decline the exercise of jurisdiction which is given, than to *usurp* that which is *not given*. The one or the other would be *treason* to the Constitution. Questions may occur which we would gladly avoid, but we cannot avoid them."

In Marbury v. Madison (1 Cranch 163) the Supreme Court said,

> "The very essence of Civil Liberty certainly consists in the right of every individual to claim the protection of the laws * * *."

We have here, right in the beginning of this question of interest, Mayor, etc. v. O'Callaghan, 41 N. J. Law, 349, 354 (1879), *supra*, a clear-cut and clean exposition of the law and a differentiation between *interest and damages*, the contract interest rate prevailing until the return of the money, and *damages* being the legal rate, as there is no contract for interest in the case of damages. This seems to be a wise and proper distinction.

Then we have the late case, (1941) of Stein v. Delano, 121 F. (2) 975, Third Circuit Court of Appeals, approving the policy of paying interest at the rate agreed by contract, saying,

> "Even where the surplus will not pay all the interest in full, no unjust equality results from dividing it on the basis of different contract rates."

We also have the statute regulating interest rates in the District, to which reference has already been made, stating that the *judgment* shall include interest at the rate agreed upon by contract, if any, until paid, which is 3 per cent on savings, and nothing on commercial accounts by contract. We also have the opinion of this Court in R.R. Co. v. Harmon, 147 U. S. 290, stating that "judgments bore interest founded on contract."

We have not been able to find a case where the law of the place was disregarded or set aside. New York and Oregon courts followed the law of their respective states and allowed interest at the legal rate on judgments. But here the situation is entirely different. The contract rate here prevails before and after judgment, as it does in Virginia, West Virginia, Iowa and in New Jersey, as Petitioner has already shown. We have not investigated the different laws of the

different states, which is unnecessary as the law of the District controls, as declared by the Congress of the United States. The question here appears to be, will this Court sustain the law or sanction its deliberate violation, and will this Court sustain the Constitution or sanction its deliberate violation at the impairment of contracts entered into?

In Ticonic Bank vs. Sprague, 303 U. S. (1938) (82 L. Ed. 926), at Page 413 this Court said,

> "As the *obligation to pay interest* is not destroyed by the insolvency, and as the rights of the secured creditor in his collateral, *contractual* or *statutory* are likewise unaffected, we are of the opinion that a secured creditor of a National Bank in receivership may enforce his lien against his security, where it is sufficient to cover both *principal* and *interest*, (all italics ours) until his claim for both is satisfied". This means interest according to the *contract rate*. Why not apply the same principle in the instant case and refuse to violate the Constitution in impairing the obligations of contracts?

Conclusion.

This is a peculiar and unusual situation. Not only the stockholders, but also the depositors who are to become the unwilling beneficiaries of this flagrant fraud, generally denounce the liquidation of this bank as unjust and fraudulent, some using violent language and some less violent; and we do not believe that a few dirty dollars in the shape of interest will change their views in the slightest, as most of them have expressed the opinion that 3% is sufficient, in view of the denial of dividends by the stockholders for the protection of the depositors. We here reproduce one short letter from a depositor addressed to Petitioner, dated Feb. 9, 1945:

> "* * * We are very glad to say that we received all of our money and appreciate the fact very much. We

never knew you personally, but we know you must be an honest and real business man, by the way your bank settled up. We also understand that *justice* was not granted when your doors were never allowed to open for business. If ever you need a favor let me know."

It may be unusual, but the depositors have shown a degree of fairness and justice far beyond that of any of our Courts, though sworn to do justice as our Courts are.

Lord Bacon in his *Novum Organum* made this observation:

> "The human understanding when it has once adopted an opinion (either as being the received opinion or as being agreeable to itself) draws all things else to support and agree with it. And though there be a greater number and weight of instances to be found on the other side, yet these be neglects and despises, or else by some *destruction* sets aside and rejects, in order that by this great and *pernicious predetermination* the authority of its former conclusions may be inviolate."

The foregoing from Lord Bacon seems to be a very accurate description of the action of the lower Courts in this case, especially in urging that *judgment* does not mean after maturity.

> "The words of the Statute are peremptory and must be obeyed * * * but whatever the consequences, we must accept the plain meaning of plain words." U. S. vs. Brown, 206 U. S. 208; 51 L. Ed. 1046.

Stripped of every other question presented except the question of the rate of interest, if any, this Court should find no difficulty in following the plain letter of the law, as enacted by Congress, as to interest.

Pope Pius XII gave a vivid description of the manner of the treatment of the rights of the stockholders in the instant case when he declared in a Christmas message some time ago:

> "They can be denied, overlooked, despised, transgressed, but they can never be overthrown with legal validity."

Petitioner has always considered himself just a Trustee for whatever he acquired in the nature of assets. He has, in the past, aided in excess of 500 young men and women in securing an education. He here reproduces a little tribute on the fly leaf of a book by Jesse Stuart, his first book "Harvest of Youth" in 1930. Addressing Petitioner, he says:

> "Allow me to present you with a copy of my first adventure. I am one of the boys of Lincoln Memorial who received a scholarship from you. You made it possible for me to finish college. Oh, for a better world of better men like you."

Petitioner is a devotee of our immortal Abraham Lincoln, and as a result, for years he has been a Trustee and Vice-President of Lincoln Memorial University, near Cumberland Gap, Tennessee, on the line of the Blue and the Gray, where he has endeavored to assist, in a modest way, the boys and girls of the hills and mountains, in addition to assisting others. He does not feel that he is an outlaw for opposing such an arbitrary act of injustice as is shown in the instant case. This Court should recall the rebellion at Runnymeade, the battles of Lexington, Bunker Hill and Yorktown, and not forget the heroic sacrifices of Wycliffe, Wallace, Bruce and Sydney, and the battle cry of Emmett, O'Connell and Grattan. Resistance to tyranny is obedience to God.

Respectfully submitted,

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I hereby certify that the foregoing petition is filed in good faith and not for delay. WADE H. COOPER.